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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,154	12/17/2001	Christopher L. Molloy	FIS920010174US1	3193
29505	7590	08/18/2005	EXAMINER	
DELIO & PETERSON, LLC 121 WHITNEY AVENUE NEW HAVEN, CT 06510			TRUONG, CAMQUY	
			ART UNIT	PAPER NUMBER

2195

DATE MAILED: 08/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/023,154

Applicant(s)

MOLLOY ET AL.

Examiner

Camquy Truong

Art Unit

2195

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-7, 9-13, 15-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-7, 9-13, 15-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claims 1, 3-7, 9-13, and 15-21 are presented for examination. Claims 2, 8 and 14 are canceled.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-4, 7, 9-10, 13, 15-16 are rejected under 35 U.S.C. 103 as being unpatentable over Sarukkai (U.S. Patent 6,571,288 B1) in view of Smocha et al. (U.S. Patent 6,694,288 B2).

4. As to claims 1, 7 and 13, Saurakkai teaches the invention substantially as claimed including: An automated method of managing server network computing resources having a workload (abstract; Fig. 2), the method comprising:

Providing resource data collectors for collecting data regarding performance of the server network computing resources, in accordance with workload (abstract, lines 9-10; col. 3, lines 7-9);

Developing a forecast of utilization of the server network computing resources, based on historical performance data (col. 4, lines 25-29);

Collecting real-time performance data regarding the network computing resources running under the workload (col. 3, lines 7-8; col. 4, lines 29-30);

Analyzing the real-time performance data and the forecast to identify a critical server network computing resource (col. 4, lines 29-32 and lines 42-45).

automatically adjusting a capacity of the resource to provide steady-state performance of said resource under said workload (col. 4, lines 42-45).

5. Sarukkai does not explicitly teach collecting performance of the server in accordance with the type of workload. However, Smocha teaches collecting performance of the server in accordance with the type of workload (col. 16, lines 55-59).

6. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Sarukkai and Smocha because Smocha's type of workload would improve the efficiency of Sarukkai's system by providing the type of workload to allow user oversee the load testing to configure the operation of each load server including the type for each load server to simulate, as well as the timing of the load testing.

7. As to claims 3, 9 and 15, Berg teaches setting threshold values for said performance data and identifying the resource in accordance with the threshold values (col. 11, lines 15-30).

8. As to claims 4, 10 and 16, Smocha teaches:

Notifying a user of the computing resources when the critical resource is a hardware resource (col.1, lines 60-65); and

Notifying the user when the capacity of said hardware resource is adjusted (col. 12, lines 16-23).

9. Claims 5-6, 11-12, and 17-21 are rejected under 35 U.S.C. 103 as being unpatentable over Sarukkai (U.S. Patent 6,571,288 B1) in view of Smocha et al. (U.S. Patent 6,694,288 B2), as applied as claims 1, 7 and 13 above, and further in view of Delucal et al (U.S. Patent 5,848,270).

10. As to claims 5, 11 and 17, Sarukkai and Smocha do not explicitly teach providing additional hardware resources available to, but unused by, the server network computing resources. However, Delucal teaches providing additional hardware resources available to, but unused by, the server network computing resources (col. 11, lines 15-19).

11. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Sarukkai, Smocha and Delucal because Delucal's additional hardware resources available to, but unused by, the server network computing resources would increase the performance of Sarukkai and Smocha's

system by providing CPUs, computer memory and computer disk storage to improve the performance of Sarukkai and Smocha's system by providing additional hardware resources available to, but unused by, the server network computing resources to eliminates the significant cost and time investment to be built and tested in order to determine mass storage requirement.

12. As to claims 6, 12, and 18- 21 Delucal teaches the additional hardware resources are selected from the group consisting of CPUs, computer memory and computer disk storage (col. 11, lines 15-19).

### ***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camquy Truong whose telephone number is (571) 272-3773. The examiner can normally be reached on 8AM – 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-3756.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIP. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIP system, contact the Electronic Business Center (EBC) at 866-217-9197(toll-free).

Camquy Truong

July 6, 2005

  
**MENG-AL T. AN**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 8407**